



State of Connecticut

HOUSE OF REPRESENTATIVES STATE CAPITOL

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Planning and Development Committee
Public Testimony
Friday, February 13, 2015

TESTIMONY IN SUPPORT OF HOUSE BILL 5090, AN ACT PROHIBITING ZONING COMMISSIONS FROM REQUIRING SPECIAL PERMITS OR SPECIAL EXCEPTIONS FOR USES MADE NONCONFORMING BY NEW ZONING REGULATIONS.

Dear Senator Osten, Representative Miller, Senator Linares, Representative Amen, and members of the Planning and Development Committee,

I submit this testimony in **support** of H.B.5090 AN ACT PROHIBITING ZONING COMMISSIONS FROM REQUIRING SPECIAL PERMITS OR SPECIAL EXCEPTIONS FOR USES MADE NONCONFORMING BY NEW ZONING REGULATIONS.

Under Connecticut General Statutes § 8-2, a newly adopted municipal zoning regulation shall not prohibit the continuance of any use, building or structure existing at the time of the regulation change, even if that use, building or structure does not comply with the new regulation. Preexisting uses, buildings and structures are "grandfathered" and allowed to continue despite being nonconforming with newly adopted zoning regulations. It is well established that Section 8-2's grandfather provision establishes a vested right running with the land which is entitled to constitutional protection.

However, in 2001, the Connecticut Appellate Court ruled in Taylor v. Zoning Board of Appeals of the Town of Wallingford, 65 Conn. App. 687 (2001) that, notwithstanding the vested right for preexisting uses, buildings and structures to continue, a municipality may require that the owner or operator of such preexisting nonconformity obtain a special permit or special exception from the municipal zoning authority in order to continue. Thus, for example, if a family had operated a small farm for generations on five acres of land, and the town amends its zoning regulations to require ten acres to farm in that zone, the farmer could be required under the Taylor decision to obtain a special permit to continue farming the family's land.

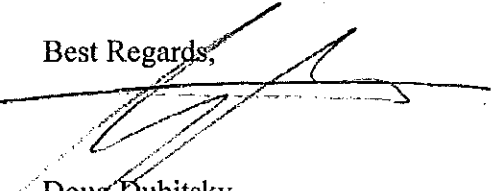
In most municipalities, the process of applying for a special permit or special exception requires hiring engineers, surveyors, soil scientists, hydrologists and attorneys, often costing tens of thousands of dollars, requiring public hearings and taking many months. Many individual land owners, small businesses and family farms simply cannot afford such an undertaking. The damage Taylor does to Section 8-2's grandfathering provision is severe enough to require legislative action.

Worse yet, the recent Appellate Court decision in Mackenzie v. Planning and Zoning Commission of the Town of Monroe, 146 Conn. App. 406 (2013) has made this troubling situation all the more unworkable. Under Mackenzie, a municipal zoning authority has no power to grant a special permit for any use, building or structure that is not in compliance with the current zoning regulations. So now, a municipality may require a special permit in order to continue a preexisting nonconforming use, but the zoning authority has no power to issue such a permit.

This puts the land owner, family farm and small business in the untenable situation where the only feasible option is to cease operations and close down. They must get a permit to continue, but even if they could afford the great expense of applying for a permit, the town cannot issue one. This also gives municipalities the ability to zone a preexisting use, building or structure out of operation simply by amending the zoning regulations and requiring a permit in order to continue the nonconformity. With no realistic way to comply, the land owner, family farm or small business forfeits its vested property rights in direct contradiction of the grandfather provision the Legislature wrote into Section 8-2.

House Bill 5090 would restore the intent of Section 8-2's grandfather provision. I urge you to support H.B.5090 and to send the bill to the General Assembly for due consideration.

Best Regards,



Doug Dubitsky
State Representative
47th District

Canterbury, Chaplin, Franklin, Hampton, Lebanon, Lisbon, Norwich, Scotland and Sprague